

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 1583 of 2001(L)

PETITIONER:

M.ABDUL SALAM,
EX-PROVISION DEALER,
PANAYIL PUTHEN VEEDU,
CHITTATTUMUKKU,
KANIYAPURAM.

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU

RESPONDENTS:

1. SALES TAX OFFICER, IIIRD CIRCLE,
TRIVANDRUM.
2. APPELLATE ASST. COMMISSIONER,
AGRICULTURAL INCOME TAX AND SALES TAX,
TRIVANDRUM.
3. SALES TAX APPELLATE TRIBUNAL,
TRIVANDRUM.
4. STATE OF KERALA, REP. BY ITS SECRETARY,
FINANCE DEPARTMENT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 20/03/2007, THE COURT ON 20/03/2007 DELIVERED THE
FOLLOWING:

ORDER ON C.M.P. NO.2630/2001 IN O.P. NO.1583/2001

DISMISSED:

20.3.2007

SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

P1: TRUE COPY OF THE STATEMENT SHOWING DETAILS OF PURCHASE & THE SOURCE OF PURCHASE OF STORES DURING THE PERIOD 1986-87 TO 91-92.

P2: TRUE COPY OF THE OBJECTION DT.19.11.96 FILED BY PETITIONER.

P3: TRUE COPY OF THE APPELLATE ORDER DT.23.2.98.

P4: TRUE COPY OF ORDER NO.1113-TRL.86-87 TO 91-92 DT.27.7.98, ISSUED BY R1.

P5: TRUE COPY OF APPEAL FOR THE ASSESSMENT YEAR 86-87.

P5(a): .DO. 87-88.

P5(b): .DO. 88-89.

P5(c): .DO. 89-90.

P5(d): .DO. 90-91.

P5(e): .DO. 91-92.

P6: TRUE COPY OF APPEAL NO.145 TO 150/98 DT.14.3.2000.

P7: TRUE COPY OF ASSESSMENT NO.1113 TRL/86-87 DT.31.10.2000.

P7(a): .DO. /87-88 .DO.

P7(b): .DO. /88-89 .DO.

P7(c): .DO. /89-90 .DO.

P7(d): .DO. /90-91 .DO.

P7(e): .DO. /91-92 .DO.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....
O.P. No.1583 of 2001
.....

Dated this the 20th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P7 series of revised sales tax assessments issued for the assessment years 1986-87 to 1991-92 on the ground that no opportunity was granted to the petitioner before revising assessments in terms of Ext.P6 appellate order of the Sales Tax Appellate Tribunal disposing of all the appeals. It is seen from the Tribunal's order that petitioner carried on business with turnover exceeding non-taxable limit without taking registration and without maintaining books of accounts. Inspection was carried out in all the years and the assessments were made on estimation basis based on data gathered on inspection. In the appeals filed against assessments, petitioner got substantial relief at two levels as is evident from the Tribunal's order. In fact Tribunal has directed refixation of turnover each year by modifying the first appellate order. Even though petitioner's allegation is that revised assessments are completed without giving opportunity to the petitioner, I am unable to understand what purpose would have been served by giving opportunity to the petitioner because Tribunal itself had suggested method of recomputation of turnover

which is what apparently the officer has done. The Tribunal's order has become final in as much as petitioner has not challenged the same in revision before this court. There is no scope for entertaining challenge against Tribunal's order in writ proceedings as there is an alternate remedy by way of revision against such orders. The findings of the Tribunal are purely on facts and petitioner rightly did not challenge the said order in revision as obviously no question of law arises from their order. The petitioner has not established that the revised assessments are not issued in accordance with the directions of the Tribunal. Therefore, there is no scope for interference by this court with the revised assessments. However, if there is any mistake in revising the assessments, i.e. non-compliance of the direction of the Tribunal, it is for the petitioner to point out the same to the officer through rectification application under Section 43 of the KGST Act. Since O.P. is pending for the last five years and this court does not propose to interfere with the revised orders, petitioner is given three weeks time from the date of receipt of this judgment to file rectification application under Section 43 of the KGST Act and if any such application is filed along with copy of this judgment within the time granted, the officer will consider

and pass orders thereon after hearing the petitioner within three weeks thereafter.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR

Judge

pms